



## Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 27<sup>th</sup> day of SEPTEMBER, 2021, by Hoffman Developer, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Hamilton, Indiana, which is located at 2135 West 146<sup>th</sup> Street in Carmel and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on May 27, 2021, and recorded on June 8, 2021, as Deed Record 2021042419, in the Office of the Recorder of Hamilton County, Indiana. The Real Estate consists of approximately 1.83 acres and is identified by the State by parcel identification number 29-09-21-000-003.001-018. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of Owner to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of petroleum contamination on the Real Estate, Program site number BFD #4210413.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in groundwater on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are 1,2,4-trimethylbenzene, benzo(a)anthracene, dibenz(a,h)anthracene, 1-methylnaphthalene, 2-methylnaphthalene, and naphthalene in groundwater.

WHEREAS: Soil and groundwater on the Real Estate were sampled for volatile organic compounds ("VOCs") and polynuclear aromatic hydrocarbons ("PAHs"). Investigations detected levels of 1,2,4-trimethylbenzene, benzo(a)anthracene, dibenz(a,h)anthracene, 1-methylnaphthalene, 2-methylnaphthalene, and naphthalene in groundwater above residential tap groundwater screening levels ("Res TAP GWSLs") established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions). Groundwater analytical results above applicable RCG screening levels are summarized on Table 1, attached hereto as **Exhibit "D"**. A site map, attached hereto as **"Exhibit E"**, depicts sample locations on the Real Estate at which the COCs were detected in groundwater above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the *Remediation Closure Guide*. However, the Department has determined that the land use restriction contained in this Covenant will enable the Real

Estate to be used safely for conditional residential and/or commercial/industrial use.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12<sup>th</sup> Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: <http://www.in.gov/idem/4101.htm>.

NOW THEREFORE, Hoffman Developer, LLC subjects the Real Estate to the following restriction and provisions, which shall be binding on Hoffman Developer, LLC and all future owners:

#### I. RESTRICTION

1. Restriction. The Owner and all future owners:
  - (a) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.

#### II. GENERAL PROVISIONS

2. Restriction to Run with the Land. The restriction and other requirements described in this Covenant shall run with the land and be binding upon and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restriction set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with the restriction set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restriction set forth in paragraph 1 above is being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.

5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED \_\_\_\_\_ 20 \_\_, RECORDED IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY ON \_\_\_\_\_, 20 \_\_, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.
7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

### III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

### IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restriction shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days

of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Hamilton County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

#### V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.
13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:  
Hoffman Developer, LLC  
9757 Westpoint Drive, Suite 600  
Indianapolis, Indiana 46256  
ATTN: Timothy J. Walter

To Department:  
Indiana Brownfields Program  
100 N. Senate Avenue, Rm. 1275  
Indianapolis, Indiana 46204  
ATTN: Dawn Andershock

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.



**EXHIBIT A**

**Limited Warranty Deed for the Real Estate**

DULY ENTERED FOR TAXATION  
Subject to final acceptance of transfer  
8th day of June 2021 - HG  
*Kevin M. Yickel* Auditor of Hamilton County  
Parcel # 17-09-21-00-003.001

nc

2021042419 WD \$25.00  
06/08/2021 03:04:00PM 3 PGS  
Jennifer Hayden  
Hamilton County Recorder IN  
Recorded as Presented

PSI



### LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, that KRISTINE J. BOUAICHI, as trustee of the Helen Hoffman Tyner 2015 Irrevocable Trust for the Benefit of Karlon Agnes Tyner dated January 23, 2015 ("**Grantor**"), BARGAINS, SELLS and CONVEYS to Hoffman Developer, LLC, an Indiana limited liability company ("**Grantee**") for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, that certain real estate located in Hamilton County, in the State of Indiana more particularly described on Exhibit A attached hereto and made a part hereof (the "**Real Estate**").

Subject, however, (i) the lien of real estate taxes and assessments not yet due and payable, and all subsequent real estate taxes and assessments; (ii) all legal highways and public rights-of-way; (iii) the provisions of all applicable zoning laws and land use laws and other applicable ordinances, rules, and regulations; (iv) any and all easements, rights, duties, obligations, covenants, conditions, limitations, and agreements of record, and matters that would be disclosed by an accurate ALTA/NSPS Land Title Survey or physical inspection of the Real Estate; and (v) the lien of any and all assessments and sewer use charges due and payable from and after the date hereof.

Grantor, as Grantor's sole warranty herein, warrants to Grantee and Grantee's successors and assigns, that the Real Estate is owned in fee simple by Grantor and free of any encumbrance made or suffered by Grantor except as set forth above, and that Grantor will forever defend title to the Real Estate (subject, however, to the foregoing exceptions) against the lawful claims of all persons claiming title to the Real Estate by, through or under Grantor, but not otherwise.

Grantee's address for tax statements and return of this Deed: Hoffman Developer, LLC  
Attn: Steven R. Edwards  
9757 Westpoint Drive, Suite 600  
Indianapolis, IN 46256

[Remainder of page intentionally blank.]



IN WITNESS WHEREOF, Grantor has executed this Limited Warranty Deed to be effective the 27<sup>th</sup> day of May, 2021.

**GRANTOR:**

HELEN HOFFMAN TYNER 2015  
IRREVOCABLE TRUST

By: *Kristine J. Bouaichi*

Name: Kristine J. Bouaichi

Its: Trustee

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Kristine J. Bouaichi, as Trustee of the Helen Hoffman Tyner 2015 Irrevocable Trust for the Benefit of Karlon Agnes Tyner dated January 23, 2015, who acknowledged execution of the foregoing Limited Warranty Deed for and on behalf of said entity.

Witness my hand and Notarial Seal this 14<sup>th</sup> day of May, 2021.

My Commission Number/Expiration:

*Anne E Straw*  
Notary Public Residing in \_\_\_\_\_ County,



ANNE E. STRAW, Notary Public  
Marion County Resident  
My Commission Expires Jan.29, 2027  
Commission #NP0718235

(Printed Signature)

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Devin D. Brown, Esq. This instrument prepared by Devin D. Brown, Esq.; Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282.

## Exhibit A

### Legal Description

Part of the 60 Acres off the entire North side of the East Half of the Northwest Quarter of Section 21, Township 18 North, Range 3 East in Hamilton County, Indiana being described as follows:

Commencing at the iron pipe at the Northwest corner of the Northwest Quarter of Section 21, Township 18 North, Range 3 East; thence on the north line of said Northwest Quarter North 89 degrees 32 minutes 10 seconds east (assumed bearing) 1735.80 feet to a mag nail and the Point of Beginning of this description; thence South 01 degrees 15 minutes 53 seconds East 300.00 feet to a 5/8 inch steel rebar with yellow cap stamped "Miller Surveying"; thence North 89 degrees 32 minutes 10 seconds east 290.40 feet to a 5/8 inch steel rebar with yellow cap stamped "Miller Surveying"; thence North 01 degrees 15 minutes 53 seconds west 300.00 feet to a mag nail on the north line of said Northwest Quarter; thence on said north line South 89 degrees 32 minutes 10 seconds west 290.40 feet to the Point of Beginning, containing 2.00 acres more or less.

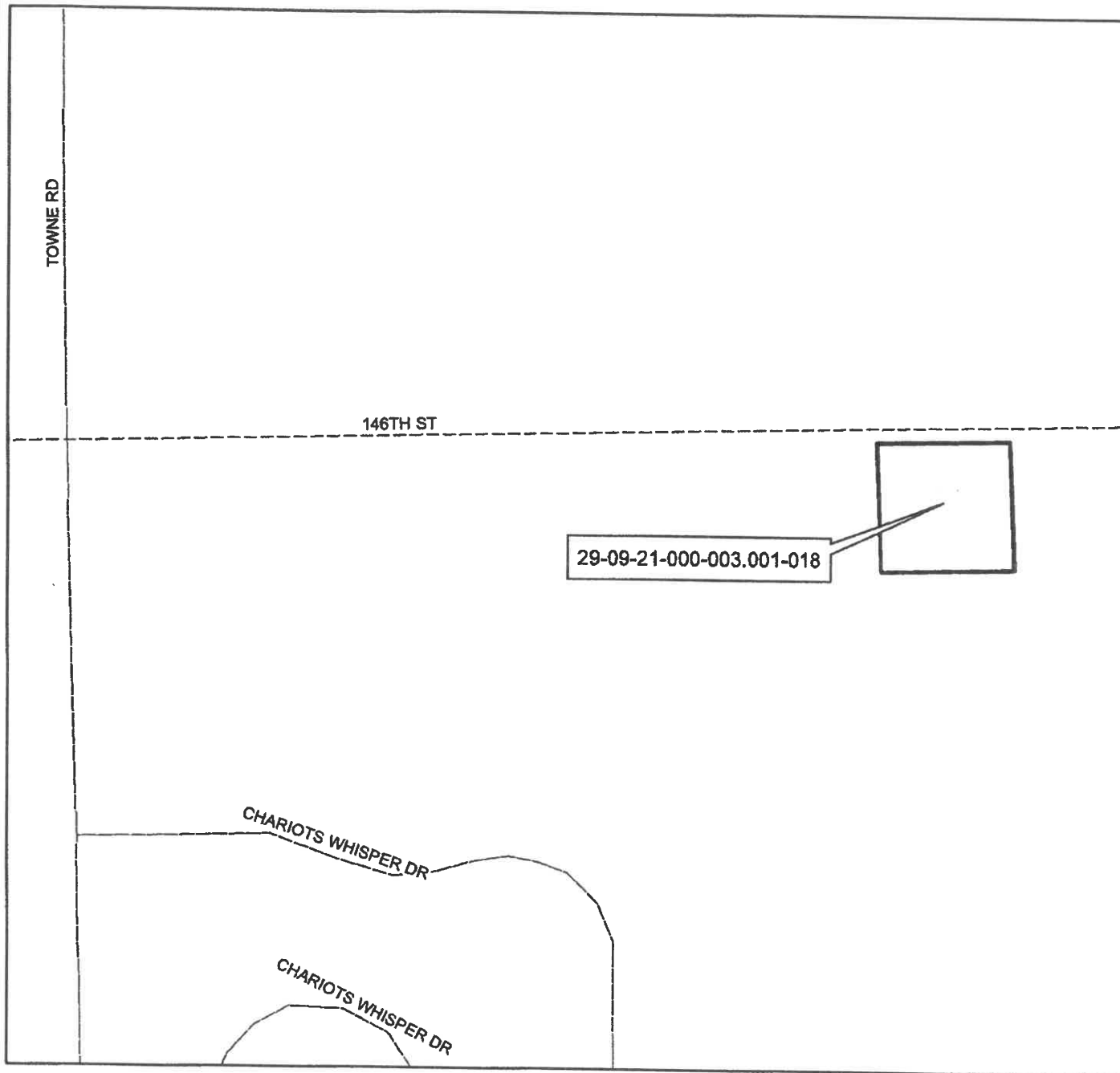
Except Therefrom,

A part of the East Half of the Northwest Quarter of Section 21, Township 18 North, Range 3 East, Hamilton County, Indiana, and being that part of the grantor's land lying within the right of way line depicted on the attached Right Of Way Parcel Plat, marked EXHIBIT "B", described as follows: Commencing at the northwest corner of said section, designated as point "218" on said plat, thence North 89 degrees 08 minutes 23 seconds east 1,735.83 feet (1735.80 feet by Instrument No. 2013004712 in the Office of the Hamilton County Recorder) along the north line of said section to the northwest corner of the grantor's land and the Point of Beginning of this description; thence continuing North 89 degrees 08 minutes 23 seconds East 290.40 feet along said north line to the northeast corner of the grantor's land; thence South 1 degree 39 minutes 40 seconds East 25.00 feet along the east line of the grantor's land; thence South 89 degrees 08 minutes 23 seconds West 290.40 feet to the west line of the grantor's land; thence North 1 degree 39 minutes 40 seconds West 25.00 feet along said west line to the Point of Beginning and containing 0.167 acres, more or less, inclusive of the presently existing right-of-way which contains 0.067 acres, more or less.

**EXHIBIT B**

**Map of the Real Estate**

# Indiana Brownfields Program Number 4210413 - Real Estate



**Mapped By:** Vickey Robinson, Office of Land Quality, Science Services Branch, Engineering and GIS Services, July 15, 2021

**Real Estate Info:** Limited Warranty Deed - Instrument Number 2021042419  
Recorded 06/08/2021

**Parcel Info:** The Site consists of Parcel Identification Number:  
29-09-21-000-003.001-018

**PLSS Info:** Section 21, T18N, R3E, Clay Township, Hamilton County, Indiana

**Property Info:** 2135 W 146<sup>th</sup> St, Carmel, IN 46074

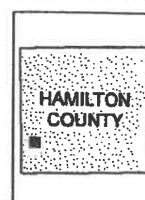
**Disclaimer:** This Map is intended to serve as an aid in graphic representation only.  
This information is not warranted for accuracy or other purpose.

 **BROWNFIELD SITE**  
 **STREET**

Hamilton County



Project Area



**EXHIBIT C**

**Copy of Comfort Letter**



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb  
Governor

Bruno L. Pigott  
Commissioner

August 27, 2021

Timothy J. Walter  
Hoffman Developer, LLC  
9757 Westpoint Dr., Suite 600  
Indianapolis, IN 46256

Re: **Comfort Letter**  
**Bona Fide Prospective Purchaser**  
Hoffman Property  
2135 West 146<sup>th</sup> Street  
Carmel, Hamilton County  
Brownfield #4210413

Dear Mr. Walter:

In response to the request by Alt & Witzig Consulting Services, LLC (A&W) on behalf of Hoffman Developer, LLC (Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 2135 West 146<sup>th</sup> Street in Carmel (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and/or petroleum products found on the Site. This letter does not provide a release from liability but provides specific information with respect to some of the criteria the Owner must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

## Site Description and History

The 1.83-acre Site is one parcel identified by the State by parcel #29-09-21-000-003.001-018. The Site is a farmstead including a residence, utility shed, two barns, greenhouse, and two silos. The Owner plans to construct townhomes on the Site and single-family homes in the surrounding area.



The residence has been on-Site reportedly since 1847 and additional structures for agricultural purposes were added throughout the years after the residence was built. In June 2020, a 1,000-gallon heating oil underground storage tank (UST) located near the west side of the residence was removed. The UST removal is further discussed below under the *Environmental Conditions* section.

The surrounding properties include: to the north, 146<sup>th</sup> Street followed by agricultural land; to the east and south, agricultural land; to the west, a retention pond and Henley Creek; and, to the southwest a wooded area.

## Due Diligence

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment* dated April 16, 2021 (April 2021 Phase I ESA) prepared for Pulte Homes of Indiana LLC and Hoffman Developer, LLC by its manager, Platinum Properties Management Company, LLC, by A&W (IDEM Virtual File Cabinet (VFC) Document #83153895). The April 2021 Phase I ESA was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527- 13, Standard Practice for Environmental Site Assessment, which satisfies the federal “All Appropriate Inquiries” (AAI) rule set forth in 40 CFR Part 312. In an effort for the Owner to qualify as a BFPP, Timothy J. Walter, Vice President – Development for Hoffman Developer, LLC by its manager, Platinum Properties Management Company, LLC, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The April 2021 Phase I ESA identified the following recognized environmental condition (REC) associated with the Site:

- Groundwater in the vicinity of the former on-Site heating oil UST detected 1,2,4-trimethylbenzene, benzo(a)anthracene, dibenz(a,h)anthracene, 1-methylnaphthalene, 2-methylnaphthalene, and naphthalene above their respective IDEM *Remediation Closure Guide* (RCG) (March 22, 2012 and applicable revisions) residential tap groundwater screening levels (Res TAP GWSLs).

Pursuant to ASTM E1527-13, Standard Practice for Environmental Site Assessment and ASTM E2600-10 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, A&W conducted a Tier 1 evaluation to evaluate the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or groundwater either on or near the Site. Based on groundwater below five feet bgs and groundwater results were below residential vapor exposure groundwater screening levels (Res VE GWSLs), A&W did not identify any potential vapor encroachment conditions (VECs) associated with the Site.

## Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents prepared by A&W. These documents may be viewed electronically by searching online by the noted document number in IDEM's VFC accessible through IDEM's website.

- *Phase I Environmental Site Assessment* (April 2020 Phase I ESA), dated April 1, 2020 (Document #83153895, page 139)
- *Phase II Environmental Site Assessment* (May 2020 Phase II ESA), dated May 12, 2020 (Document #83153890)
- *Heating Oil Tank Closure Assessment*, dated September 25, 2020 (Document #83153893)

For purposes of this letter, sample analytical results were compared to IDEM's RCG screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively), soil samples collected between 0 and 18 feet bgs were compared to the excavation worker direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth. Groundwater samples were compared to Res TAP GWSLs and residential vapor exposure groundwater screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure groundwater screening levels (Indus VE GWSLs).

### *Phase I ESA – April 2020*

The April 2020 Phase I ESA identified the following REC associated with the Site:

- A heating oil UST was observed immediately west of the on-Site residence and has been located on the Site for approximately 90 years.

### *Phase II ESA – May 2020*

In April 2020, three soil borings (B-1 through B-3) were advanced on the Site near the heating oil UST. The soil borings were advanced to a maximum depth of 12 feet bgs. A groundwater sample was collected from boring B-2. Soil and groundwater samples were analyzed for volatile organic compounds (VOCs) and polynuclear aromatic hydrocarbons (PAHs). No constituents analyzed in soil were detected at levels above applicable RCG screening levels.



The groundwater sample detected concentrations of 1,2,4-Trimethylbenzene, benzo(a)anthracene, dibenz(a,h)anthracene, 1-methylnaphthalene, 2-methylnaphthalene, and naphthalene at levels above their respective Res TAP GWSLs. No other constituents analyzed in groundwater were detected at levels above applicable RCG screening levels. Refer to Table 1, below, for a summary of groundwater analytical data above applicable RCG screening levels.

**TABLE 1**  
**April 2020 Groundwater Concentrations Exceeding**  
**Applicable IDEM RCG Screening Levels**

Contaminant Detected	Sample Location & Results (parts per billion (ppb))	Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	B-2			
1,2,4-Trimethylbenzene	<b>495</b>	56	NE	
Benzo(a)anthracene	<b>0.67</b>	0.30		
Dibenz(a,h)anthracene	<b>1.07</b>	0.25		
1-Methylnaphthalene	<b>270</b>	11		
2-Methylnaphthalene	<b>362</b>	36		
Naphthalene	<b>61.9</b>	1.2	110	460

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level  
 NE = not established

*Heating Oil Tank Closure Assessment – September 2020*

In June 2020, the 1,000-gallon heating oil UST was removed from the Site. An aboveground storage tank (AST)<sup>1</sup> that resided directly above the UST was removed prior to the UST removal activities. Soil excavated during the UST removal was temporarily set aside to allow for confirmation sampling. Once soil confirmation sampling was completed, the excavated soils were returned to the UST pit for safety and residential structural concerns. There was no visual evidence that the tank had holes or had leaked into the subsurface.

Prior to backfilling, four confirmatory soil samples were collected from the UST pit. One bottom sample (BOT-1) and its corresponding duplicate (FD-1) were collected from approximately 12 feet bgs, three samples (SW-1 through SW-3) were collected from the north, south and west sidewalls at approximately 6 feet bgs. No east sidewall soil sample was collected due to the presence of the residence. One sample (OB-1) was collected from the stockpile soils. Soil samples were analyzed for VOCs and PAHs. No constituents analyzed in soil were detected at levels above applicable RCG

<sup>1</sup> No additional information about the contents of the AST or its removal was included in the September 2020 Heating Oil Tank Closure Assessment report.

screening levels. Groundwater was not encountered during confirmatory soil sample collection.

### **Technical Summary**

The groundwater sample collected detected concentrations of 1,2,4-trimethylbenzene, benzo(a)anthracene, dibenz(a,h)anthracene, 1-methylnaphthalene, 2-methylnaphthalene, and naphthalene at levels above their respective Res TAP GWSLs. A groundwater use restriction is needed on-Site to ensure no exposure to on-Site groundwater contamination. Therefore, an environmental restrictive covenant (ERC) is being issued to the Owner in conjunction with this Comfort Letter.

### **Liability Clarification**

IDEM's "*Brownfields Program Comfort and Site Status Letters*" Non-rule Policy Document, W-0051, (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Owner, that:

- (1) no state or federal enforcement action at the Site is pending;
- (2) no federal grant requires an enforcement action at the Site;
- (3) no condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) neither the Owner nor an agent or employee of the Owner caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site; and,
- (5) the Owner is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exception to liability for hazardous substance contamination found in IC §13-25-4-8(b) and for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the applicable statutory criteria are met.

As discussed below, the Owner has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and petroleum contamination provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

### **Bona Fide Prospective Purchaser**

Under IC § 13-25-4-8(a), except as provided in IC § 13-25-4-8(b), (c), or (d), a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. IC § 13-25-4-8(b) references certain exceptions to liability imposed by IC § 13-25-4-8(a), including the exception in Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which states that a BFPP whose potential liability for a release or

threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus, a prospective purchaser that qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

Under Indiana law, if the Owner qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Owner even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such an owner for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Owner to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA or the Resource Conservation and Recovery Act, 42 U.S.C. § 6901.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Owner acquired the Site on May 27, 2021, after January 11, 2002 and June 30, 2009, and the disposal of hazardous substances and petroleum at the Site occurred prior to that date. See 42 U.S.C. § 9601(40)(A); § IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Owner has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Owner has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Owner meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Owner must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural

resource exposure to any previously released hazardous substance.” 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Owner must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Owner recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Owner will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Owner must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

### **Reasonable Steps**

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the petroleum contamination found at the Site in order to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Implement and maintain the land use restrictions required by this letter.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing petroleum contamination or any information about new (or previously unidentified) contamination.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

### **Institutional Control**

Since levels of 1,2,4-trimethylbenzene, benzo(a)anthracene, dibenz(a,h)anthracene, 1-methylnaphthalene, 2-methylnaphthalene, and naphthalene detected in groundwater on-Site were above applicable RCG residential screening levels, IDEM is requiring an ERC to be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of

this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restriction in the enclosed ERC, which is summarized below:

- Not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.

## **Conclusion**

IDEM encourages the residential redevelopment of the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human

health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. In addition, if any acts or omission by the Owner exacerbates the contamination at the Site, or if the Owner does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Owner would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. This letter does not constitute an assurance that the Site is safe for any particular use.

In order for IDEM to consider this letter effective, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the deed for the Site in the Hamilton County Recorder's Office. Instructions explaining the process of how to correctly record the ERC are enclosed. Please return a certified copy of the filed document to the address listed below:

Indiana Brownfields Program  
100 North Senate Avenue, Room 1275  
Indianapolis, Indiana 46204  
ATTN: Dawn Andershock

IDEM is pleased to assist Hoffman Developers, LLC with this residential redevelopment project. Should you have any questions or comments, please contact Dawn Andershock at (317) 234-4861. She can also be reached via email at: [dandershock@ifa.in.gov](mailto:dandershock@ifa.in.gov).

Sincerely,



Peggy Dorsey  
Assistant Commissioner  
Office of Land Quality

Enclosure (ERC)

cc: Patricia Polston, U.S. EPA Region 5 (*electronic copy*)  
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)  
Dawn Andershock, Indiana Brownfields Program (*electronic copy*)  
Susan Reitz, Alt & Witzig Consulting Services, LLC (*electronic copy*)  
Hamilton County Health Department (*electronic copy*)

**EXHIBIT D**

**TABLE 1**  
***Hoffman Property, Carmel – BFD #4210413***  
**April 2020 Groundwater Concentrations Exceeding**  
**Applicable IDEM RCG Screening Levels**

**TABLE 1**  
**Hoffman Property, Carmel – BFD #4210413**  
**April 2020 Groundwater Concentrations Exceeding**  
**Applicable IDEM RCG Screening Levels**

Contaminant Detected	Sample Location & Results (parts per billion (ppb))	Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	B-2			
1,2,4-Trimethylbenzene	<b>495</b>	56	NE	
Benzo(a)anthracene	<b>0.67</b>	0.30		
Dibenz(a,h)anthracene	<b>1.07</b>	0.25		
1-Methylnaphthalene	<b>270</b>	11		
2-Methylnaphthalene	<b>362</b>	36		
Naphthalene	<b>61.9</b>	1.7	110	460

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level  
 NE = not established

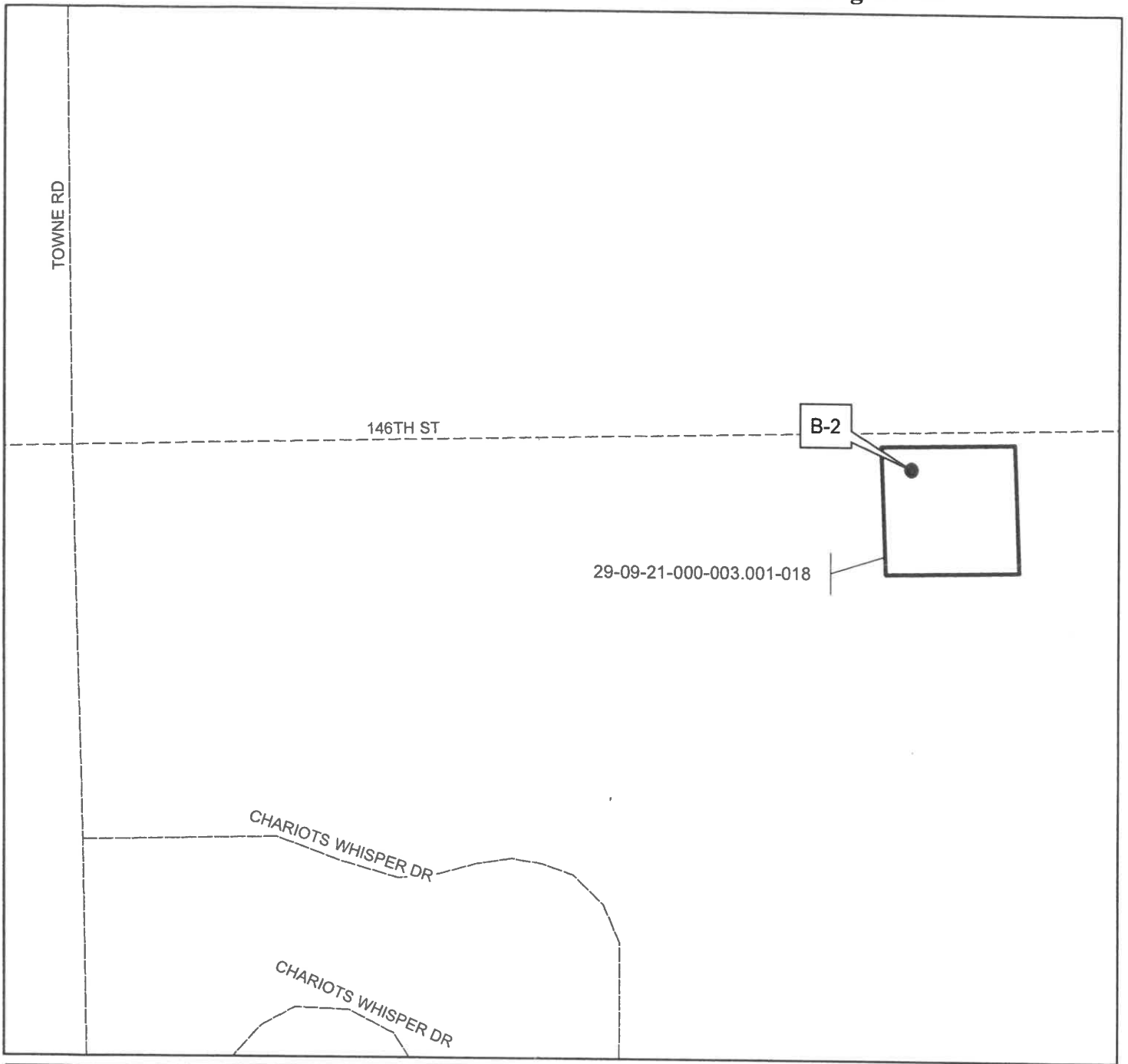


## EXHIBIT E

***Hoffman Property, Carmel – BFD #4210413***  
**Site Map Depicting Sampling Locations At Which**  
**COCs Were Detected Above Applicable IDEM RCG Screening Levels**

*DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.*

# BFD 4210413 - Site Map Depicting Sample Location Where COCs Were Detected Above Applicable IDEM RCG Screening Levels



**Mapped By:** Vickey Robinson, Office of Land Quality, Science Services Branch, Engineering and GIS Services, July 23, 2021

**Real Estate Info:** Limited Warranty Deed - Instrument Number 2021042419  
Recorded 06/08/2021

**Parcel Info:** The Site consists of Parcel Identification Number:  
29-09-21-000-003.001-018

**Sample Info:** Sample Location based on "Figure 4 – Groundwater Analytical Results Above IDEM RCG Screening Levels" by Alt & Witzig Consulting Services

**PLSS Info:** Section 21, T18N, R3E, Clay Township, Hamilton County, Indiana

**Property Info:** 2135 W 146<sup>th</sup> St, Carmel, IN 46074

**Disclaimer:** This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.

- SAMPLE LOCATION**
- BROWNFIELD SITE**
- STREET**

Hamilton County

Project Area